

HAND DELIVERED

2541
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

EXAMINER: R. ROSENBERGER : ATTY DOCKET NO.: GK-BIO-292C2
APPLICANT(S): E. W. STARK : GROUP ART UNIT: 2505
SERIAL NO.: 08/385,073 : FILED: 02/07/95
TITLE: METHOD AND APPARATUS FOR OPTICAL INTERACTANCE AND TRANSMITTANCE MEASUREMENTS

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Assistant Commissioner for Patents
Washington, D.C. 20231

37/Reg.
In
Reconsideration
JL
1-2892
RECEIVED

JAN 14 1997

GROUP 2500

REQUEST FOR RECONSIDERATION

SIR:

I) STATEMENT OF FACTS

- 1) On May 16, 1996, the USPTO issued an Office Action for the subject application. The Office Action stated that the statutory period for response was set to expire three months from the mailing date of May 16, 1996. Pages 13-14 of the Office Action further stated that the Office Action was classified as Final. A copy of the cover page and pages 13-14 of the Office Action are included in Appendix A of this Request for Reconsideration.
- 2) On November 18, 1996, in response to the Office Action, applicant filed an Amendment, a Petition for a Three Month Extension of Time, and a Notice of Appeal with the USPTO. Each document contained a certification, as prescribed by 37 CFR §1.8, and was deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, DC 20231. A copy of each document filed with the USPTO on November 18, 1996, is included in Appendix B of this Request for Reconsideration.

- 3) On November 25, 1996, the USPTO acknowledged receipt of each document filed on November 18, 1996, by date-stamping a Filing Receipt. A copy of the date-stamped Filing Receipt is included in Appendix C of this Request for Reconsideration.
- 4) On December 19, 1996, the USPTO issued a Notice of Abandonment stating that the subject application was abandoned because of applicant's failure to respond to the Office Action dated May 16, 1996. A copy of the Notice of Abandonment is included in Appendix D of this Request for Reconsideration.

II) APPLICABLE LAW

The three month statutory period for responding to an Office Action is extendable by three months, in accordance with 37 CFR §1.136(a), by filing a Petition for a Three Month Extension of Time along with the fees required by 37 CFR §1.17. When the last day of the extended statutory period is a Saturday, in accordance with 37 CFR §1.7, the time period for taking any action is further extendable to the next succeeding day which is not a Saturday, Sunday or Federal Holiday.

III) LEGAL ANALYSIS

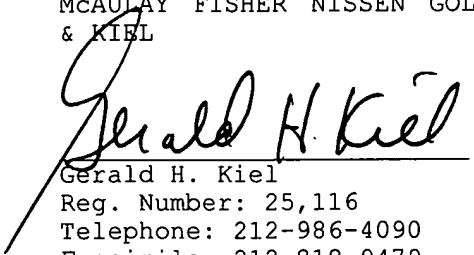
The three month statutory period for responding to the Office Action dated May 16, 1996, was extendable by three months to November 16, 1996, in accordance with 37 CFR §1.136(a), by filing a Petition for a Three Month Extension of Time along with the fees required by 37 CFR §1.17. Given that November 16, 1996, was a Saturday, in accordance with 37 CFR §1.7, the statutory period was further extendable to Monday, November 18, 1996.

On November 18, 1996, applicant filed an Amendment, a Petition for a Three Month Extension of Time, a Notice of Appeal, and a check covering the required filing fees with the USPTO. (See Appendix B). Moreover, the USPTO has acknowledged receipt of these documents. (See Appendix C). Therefore, applicant's response to the Office Action dated May 16, 1996, was both timely filed and received by the USPTO.

IV) ACTION REQUESTED

The Examiner is now requested to take two actions in this matter. First, the Examiner is requested to provide the undersigned with a written communication stating that the Notice of Abandonment dated December 19, 1996, was issued in error and that the application is still pending at the USPTO. Second, the Examiner is requested to consider each of the documents filed on November 18, 1996, and advise applicant of the status of the pending application.

Respectfully submitted,
McAULAY FISHER NISSEN GOLDBERG
& KIEL



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